

No. 78-941

Supreme Court U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

ROBERT SHELTON JAGGARD AND
MARYBETH JAGGARD, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.
*Solicitor General
Department of Justice
Washington, D.C. 20530*

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Petitioner¹ seeks review of the decision below that he was not entitled to a religious exemption from the tax on self-employment income under 26 U.S.C. (1970 ed.) 1402(h).²

The pertinent facts are as follows: During 1974, petitioner was a self-employed physician who earned income from self-employment within the meaning of Section 1402(b) of the 1954 Code in the amount of \$13,200. It

¹"Petitioner" refers to Robert Shelton Jaggard. Marybeth Jaggard is a party solely because she filed a joint return with her husband for the year in issue.

²The Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, Section 1901(a)(155)(B), redesignated subsection (h) of Section 1402 as subsection (g), effective for 1977 and latter years (see Pet. App. A 2).

is undisputed that petitioner was not a member of a "recognized religious sect" within the meaning of Section 1402(h) of the Code. He nevertheless claimed a "religious exemption" under that provision on his 1974 tax return and paid no self-employment tax with respect to that income. On audit, the Commissioner of Internal Revenue determined that petitioner did not satisfy the requirements necessary to qualify for a religious exemption under Section 1402(h) (Pet. App. A 1-2). In the Commissioner's view, the statutory exemption applies only to a person who is "a member of a recognized religious sect * * * and is an adherent of established tenets or teachings of such sect * * * by reason of which he is conscientiously opposed to the acceptance of the benefits of any private or public insurance * * *" (see Pet. 5).

Petitioner challenged the Commissioner's determination in the Tax Court on the ground that the limitation of the exemption to membership in a recognized religious sect violates the First Amendment to the Constitution. The Tax Court upheld the Commissioner's determination (Pet. App. A 1-5) and the court of appeals affirmed *per curiam* (Pet. App. B 6-8).

The decision below correctly held that Section 1402(h) of the Code does not violate the First Amendment. As this Court observed in *Walz v. Tax Commission*, 397 U.S. 664, 669 (1970), the ultimate inquiry under the First Amendment is "whether [the] particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so." As the court of appeals concluded (Pet. App. B 7-8):

the purpose of 1402(g) is neither the advancement nor the inhibition of religion. It represents a congressional attempt to accommodate sincerely held religious beliefs against private and public insurance programs consistent with the overall welfare purpose of the Social Security Act. Congress could

reasonably conclude that individuals on their own could not be relied upon to provide for themselves in the event of dependency, but that members of a religious sect who share these views would provide for dependent members.

See, also, *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1979